

1987

State of Utah v. Darrell J. McIntire : Petition for Rehearing

Utah Court of Appeals

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David L. Wilkinson; attorney general; William F. Daines; Deputy Weber County Attorney; attorneys for respondent.

Robert L. Froerer; Public Defender Association; attorney for appellant.

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BRIEF

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DOCKET NO. 870449-CA IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff/)	
Respondent,)	
)	
vs.)	PETITION FOR RE-HEARING
)	
DARRELL J. McINTIRE,)	Case No. 870449-CA
)	
Defendant/)	
Appellant.)	

This is a Petition for Re-Hearing of the Utah Court of Appeal's decision denying Defendant's Appeal in the above-entitled action. The Defendant appeals from convictions as noted in Appellant's Brief in the Second Judicial District Court, Weber County, State of Utah, the Honorable David E. Roth, presiding.

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Attorney for Respondent

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff/)	
Respondent,)	
)	
vs.)	PETITION FOR RE-HEARING
)	
DARRELL J. MCINTIRE,)	Case No. 870449-CA
)	
Defendant/)	
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This is a Petition for Re-Hearing of the Utah Court of Appeal's decision denying Defendant's Appeal in the above-entitled action. The Defendant appeals from convictions as noted in Appellant's Brief in the Second Judicial District Court, Weber County, State of Utah, the Honorable David E. Roth, presiding.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff/)	
Respondent,)	PETITION FOR RE-HEARING
)	
vs.)	Case No. 870449-CA
)	
DARRELL J. MCINTIRE,)	
)	
Defendant/)	
Appellant.)	

COMES NOW Defendant/Appellant in the above-entitled action, by and through his attorney of record, Robert L. Froerer, and hereby petitions this Court for a Re-Hearing of the Court's decision denying his Appeal which decision was filed October 17, 1988 (Add., Ex. 1). This Petition is filed pursuant to Rule 35 of the Rules of the Utah Court of Appeals. Counsel hereby certifies that this petition is presented in good faith and not for delay.

Defendant's Appeal was denied on the basis that the Defendant, DARRELL J. MCINTIRE, did not reserve his right to appeal the issues raised in the suppression hearing when he pled guilty.

Mr. McIntire, through his prior counsel, RANDINE SALERNO, did, however, reserve such right both by stipulation with the State's Attorney (T. 8-9; Add., Ex. 2) and with the Court's concurrence (T. 8; Add., Ex. 2) at the time Mr. McIntire entered his plea (Add., Ex. 2). See also T. 2; Add., Ex.2.

Due to the fact that this Court denied Mr. McIntire's Appeal solely on the basis that he did not reserve his right to

appeal the suppression hearing issues, and now, upon a review of the evidence indicating that, in fact, such right was reserved, request is hereby made that the Court review the matter and decide the case on the merits as presented in the briefs of the parties and at time of oral argument.

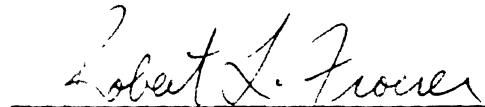
RESPECTFULLY SUBMITTED this 11th day of November, 1988.



ROBERT L. FROERER
Attorney for Defendant/
Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of November, 1988, I mailed, postage prepaid, four true and accurate copies of the foregoing Petition for Re-Hearing to William F. Daines, Deputy Weber County Attorney, Attorney for Respondent, 7th Floor Municipal Building, Ogden, Utah 84401.



Robert L. Froerer

ADDENDUM

COVER SHEET

CASE TITLE:

State of Utah,
Plaintiff and Respondent,
v.
Darrell J. McIntire,
Defendant and Appellant.

Court of Appeals #870449-CA

PARTIES:

Robert L. Froerer (Argued)
Public Defender Association
Attorney for Appellant
205 - 26th Street, Suite #13
Ogden, UT 84401

David L. Wilkinson
State Attorney General
B U I L D I N G M A I L

William F. Daines (Argued)
Deputy County Attorney
7th Floor Municipal Building
Ogden, UT 84401

TRIAL JUDGE:

Honorable David E. Roth
Weber County
Second District Court
2549 Washington Blvd.
Ogden, UT 84401

October 17, 1988 OPINION

This cause having been heretofore argued and submitted, and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the judgment of the district court herein be, and the same is, affirmed.
Opinion of the Court by PAMELA T. GREENWOOD, Judge;
REGNAL W. GARFF, and JUDITH M. BILLINGS, Judges; concur.

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of October, 1988, a true and correct copy of the foregoing OPINION was mailed or personally delivered to each of the above parties.


Case Manager

TRIAL COURT:

Second District
Weber County
Case Nos. #18313, #18314
#18315, #18316, and #18317.

IN THE UTAH COURT OF APPEALS

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State of Utah,)	
)	
Plaintiff and Respondent,)	OPINION
)	(For Publication)
v.)	
)	
Darrell J. McIntire,)	Case No. 870449-CA
)	
Defendant and Appellant.)	

FILED

Before Judges Garff, Billings and Greenwood.

GREENWOOD, Judge:

May Stover
OCT 1 1988
Mary Stover
Clerk of Court
Utah Court of Appeals

McIntire appeals his conviction, based on a guilty plea, of theft, a class A misdemeanor in violation of Utah Code Ann. § 76-6-404 (1978), and possession of a controlled substance with intent to distribute for value, a second degree felony in violation of Utah Code Ann. § 58-37-8 (1987). On appeal, McIntire claims that the search which produced evidence of those crimes violated his fourth amendment rights. We affirm because McIntire's guilty plea precludes consideration of the alleged unconstitutional search and seizure.

During a search of McIntire's house pursuant to a warrant on April 22, 1987, officers found controlled substances and an RCA television. McIntire was charged with possession of a controlled substance with intent to distribute for value and theft, based upon information that the television was stolen. McIntire moved to suppress the evidence, claiming that the search warrant violated his fourth amendment rights because it failed to describe the place to be searched with particularity and did not authorize seizure of the television. The trial court denied the motion. On September 18, 1987, McIntire pled guilty to several charges, including theft and possession of a controlled substance with intent to distribute for value.

The dispositive issue in this case is whether, by entering his guilty plea, McIntire waived his right to appeal the trial court's denial of his motion to suppress. The United States Supreme Court has recognized that entry of a guilty plea, voluntarily and intelligently made, precludes a defendant from alleging denial of constitutional rights which occurred

prior to entry of the guilty plea.¹ Tollett v. Henderson, 411 U.S. 258, 267 (1973); 4 LaFave, Search and Seizure § 11.1(d) (2d ed. 1987); see also State v. Yeck, 566 P.2d 1248, 1249 (Utah 1977). In State v. Sery, 758 P.2d 935, 938 (Utah Ct. App. 1988), this Court noted that Utah Supreme Court caselaw is "consistent with the common-law rule that a voluntary guilty plea is a waiver of the right to appeal all nonjurisdictional issues, including alleged pre-plea constitutional violations."² Such issues necessarily include professed illegal searches and seizures under the fourth amendment. United States v. Johnson, 634 F.2d 385, 386 (8th Cir. 1980); 4 LaFave, Search and Seizure § 11.1(d) (2d ed. 1987).

In this case, McIntire entered his guilty plea after the trial court refused to suppress the controlled substances and the television. The written guilty plea states that McIntire, after conferring with his trial attorney, freely and voluntarily decided to plead guilty to several offenses, including theft and possession of a controlled substance with intent to distribute for value. Paragraph e of the plea states, "I know that under the Constitution of Utah, that if I were tried and convicted by a jury or by the court, that I would have a right to appeal my conviction and sentence" Paragraph f states, "I know and understand that by entering a plea of guilty, I am waiving my constitutional rights as set out in the five proceeding [sic] paragraphs, and that I am, in fact, fully incriminating myself by admitting I am guilty of the crime to which my plea of guilty is entered." McIntire initialed paragraphs e and f and signed the guilty plea. The guilty plea contains no language conditioning the plea on McIntire's right to appeal the trial

1. Several state statutes, however, depart from the usual common law rule and allow a defendant to appeal denial of a suppression motion, despite the fact that the conviction is based on the entry of a guilty plea. Cal. Penal Code § 1538.5(m) (West 1982); N.Y. Crim. Proc. Law § 710.70(2) (Consol. 1984); Wis. Stat. Ann. § 971.31(10) (West 1985).

2. In Sery, this Court adopted an exception to this general rule and held that where a defendant's conditional no contest plea was agreed to by the defendant and the prosecution and approved by the trial court, defendant was not precluded from appealing based on a violation of his fourth amendment rights. Sery, 758 P.2d at 937-40 (Utah Ct. App. 1988); see also Wright, Federal Practice and Procedure: Criminal 2d § 175 (1982). In Sery, the no contest plea explicitly preserved the suppression issue for appeal and allowed withdrawal of the no contest plea if the appellate court determined that the trial court should have suppressed the evidence.

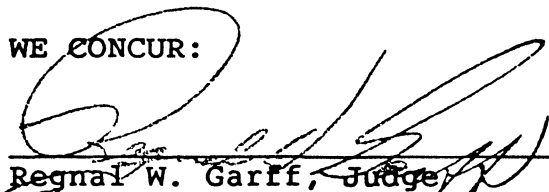
court's denial of the motion to suppress. Therefore, because McIntire entered an unconditional guilty plea freely, voluntarily and intelligently, and expressly waived his right to appeal, we hold that McIntire is precluded from raising fourth amendment issues on appeal.

Affirmed.

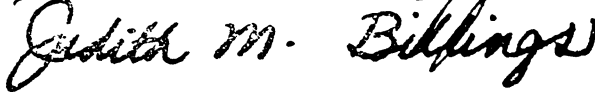


Pamela T. Greenwood, Judge

WE CONCUR:



Reginal W. Garff, Judge



Judith M. Billings, Judge

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 2 STATE OF UTAH, IN AND FOR WEBER COUNTY
 3

4 THE STATE OF UTAH,)
)
 5 Plaintiff,) Case Nos. 18313, 18314,
) 18315, 18317, 18318, 18379
 6 -vs-)
) TRANSCRIPT ON APPEAL
 7 DARRELL McINTIRE,)
)
 8 Defendant)

9
 10
 11 BE IT REMEMBERED the above entitled matter came on for
 12 hearing before the Hon. DAVID E. ROTH, Judge of the above
 13 entitled Court, on September 14, 1987.

14 WHEREUPON, the following proceedings were had, to wit:
 15
 16
 17
 18

19 A p p e a r a n c e s:

20 WILLIAM F. DAINES, ESQ.,

21 Attorney for the Plaintiff;

22 RANDINE SALERNO, ESQ.,

23 Attorney for the Defendant.
 24
 25

1 THE COURT: Ready on the McIntire cases?

2 MS. SALERNO: We are, your Honor, I apologize for
3 the delay.

4 THE COURT: Let's take those first.

5 MR. DAINES: I am ready to do that.

6 THE COURT: 18313, 14, 15, 18, 313, 18318 and
7 18379, State vs. Darrell McIntire.

8 MS. SALERNO: Yes, your Honor. It is my under-
9 standing we have worked out a plea negotiation as follows:
10 The Defendant will plead guilty to 18314 straight up.
11 18315, Second Degree felony straight up, and the State will
12 dismiss Count 2. 18317, be dismissed. 18313 be dismissed.
13 18318 be dismissed. 18316 was suppressed, so that will be
14 dismissed.

15 MR. DAINES: That's correct, your Honor.

16 MS. SALERNO: And then he will plead guilty to a
17 third degree felony, 18379, dismiss Count 2. And all
18 misdemeanors that are involved, is that correct?

19 MR. DAINES: No, your Honor, going to dismiss--
20 let's see. Yeah, you are right, you are right.

21 THE COURT: The State is moving to amend 18379?

22 MR. DAINES: Yes, your Honor.

23 THE COURT: From 2nd to 3rd? Do you have an amended
24 Information?

25 MR. DAINES: I have an amended Information on that.

1 MS. SALERNO: And we are going to specifically
2 reserve our right to appeal the Suppression issues that were
3 raised before your Honor in the Supression Hearing. And I
4 will move to withdraw as counsel and the Public Defender's
5 Office, I guess, will then enter to do the appeal.

6 THE COURT: As I understood it, there was a
7 conflict of interest at one point in time. There isn't any
8 more?

9 MS. SALERNO: Your Honor, I had occasion to discuss
10 the fee situation with Reed Richards. He indicated to me he
11 did not feel that there would be a conflict of interest issue
12 on appeal on the issue of the suppression, so he wasn't
13 willing--

14 THE COURT: Conflict of interest involved another
15 person that may be a witness at trial, is that right.

16 MS. SALERNO: Correct.

17 THE COURT: Mr. Sullivan, do you know anything about
18 this?

19 MR. SULLIVAN: Your Honor, I know that much about
20 it, that there would have been a conflict of interest at the
21 trial, but aside from that, we haven't heard.

22 THE COURT: The State's reason for these Motions
23 and Amendments?

24 MR. DAINES: The issue is we have lots of tough
25 cases, and this is plainly in the interests of judicial economy.

1 I have spoken with the people involved. It would be anticipated
2 restitution on all charges would be eventually collected,
3 and felt that theoretically--

4 THE COURT: Do you have a figure for that?

5 MR. DAINES: I don't have a figure right now.

6 THE COURT: Anticipating referring it to the
7 Probation Department?

8 MS. SALERNO: Yes, your Honor, we would like a
9 Pre-Sentence Report.

10 MR. DAINES: Just a matter of one case was suppressed
11 and other than that, it is one for one situation.

12 THE COURT: You have talked to the victims in each
13 theft and burglary case?

14 MR. DAINES: Your Honor, I haven't actually spoken
15 to victims. I have spoken to the police officers who are
16 involved. And that is what they wanted to do. They have
17 been working with the people who are the victims. But I
18 haven't spoken to the people who are victims specifically.

19 This case, to a great extent, came about through a sting
20 type of operation. And after the sting operation was conducted
21 by the police, these other situations came to light. And
22 so I--I did not personally speak to the victims of those
23 cases. I have always just looked to the police officers as
24 the primary movers due to that fact, due to the fact we
25 accidentally stuck him on these other charges.

1 THE COURT: You have an Amended Information to file?

2 MR. DAINES: I do have. I have given it to the
3 Clerk. May the record show--the other thing being, your Honor,
4 that we have asked that they be covered on restitution. On
5 16 there wasn't anything we could do about it because that
6 was suppressed.

7 THE COURT: Which misdemeanors are we talking about
8 would pleas be entered? 18317, Class A Misdemeanor, anticipatin
9 a plea to that?

10 MR. DAINES: Yes, your Honor.

11 MS. SALERNO: Yes.

12 THE COURT: And Count 2 on 18315 and Count Two on
13 18379.

14 Read the Amended Information.

15 (Information read by the Clerk.)

16 THE COURT: Your correct name is Darrell McIntire?

17 MR. McINTIRE: Yes.

18 THE COURT: Your date of birth is May 4, 1956?

19 MR. McINTIRE: Yes.

20 THE COURT: Have you received copies of all of
21 these Informations, including the Amended Information that
22 was just read to you?

23 MR. McINTIRE: Yes.

24 THE COURT: You understand what you are charged with?

25 MR. McINTIRE: Yes.

1 THE COURT: You are here with Randine Salerno.
2 Is she your attorney?
3 MR. McINTIRE: Yes, she is.
4 THE COURT: She tells me you intend to plead guilty
5 to several charges, is that right?
6 MR. McINTIRE: Three. Well, and the misdemeanor,
7 right.
8 THE COURT: Plead guilty to Second Degree Felony
9 controlled substance charge, 18314?
10 MR. McINTIRE: Yes.
11 THE COURT: Plead guilty to another controlled
12 substance charge, a Second Degree Felony, in 18315?
13 MR. McINTIRE: Yes.
14 THE COURT: Also to a Class A Misdemeanor, possession
15 of a controlled substance, Count Two of the same Information?
16 MS. SALERNO: It should be Class B according to
17 my records.
18 THE COURT: Mr. Daines, I am looking at your
19 Information. It says Class A.
20 MR. DAINES: Which one is that?
21 THE COURT: 18315, Possession of Controlled Substance,
22 Marijuana, more than an ounce, Class A Misdemeanor.
23 MR. DAINES: That's what the Information has always
24 said as far as I know.
25 MS. SALERNO: My understanding is he was going to

1 plead to a Class B, simple possession of Marijuana.

2 MR. DAINES: We were going to amend two Informations?

3 I thought we had only agreed to amend one Information.

4 MS. SALERNO: Well, that was my understanding.

5 MR. DAINES: Did I say I was going to amend more
6 than one Information?

7 MS. SALERNO: No, you didn't. But we agreed it was
8 a Class B Misdemeanor, simple possession of marijuana. So
9 I am sorry, it was an oversight on my part, unless you want
10 to dismiss it.

11 THE COURT: Well, you see if you can work it out.
12 I will pass the cases. Put you at the end of the calendar.
13 When you get it together, let me know. Have a seat, Mr.
14 McIntire.

15 MS. SALERNO: Thank you.

16 * * *

17 THE COURT: Recall State vs. Darrell McIntire.
18 Do you have your agreement nailed down now?

19 MR. DAINES: Yes, we do, your Honor.

20 THE COURT: Tell me once again what it is.

21 MR. DAINES: Alright. There will be pleas of guilty
22 straight up to 18314 and 18315. We have amended 18379. Those
23 will be the burglary pleas; all thefts, all the theft mis-
24 demeanors, he will also plead guilty to. The Possession of
25 marijuana, which is a Class A, we will move to dismiss.

1 THE COURT: Which one is that, 18315?
2 MS. SALERNO: Yes.
3 THE COURT: How many theft misdemeanors are there?
4 MS. SALERNO: Two.
5 THE COURT: Where are they?
6 MR. DAINES: They are--
7 MS. SALFRNO: 18317, Count 2; and 18379, Count 2.
8 THE COURT: Fran, I need 18317. Oh, I have got that.
9 18319 is the one I am missing.
10 MS. SALERNO: 79, your Honor.
11 THE COURT: 18379?
12 MS. SALERNO: Uh-huh.
13 THE COURT: Okay. Now 18317, Count 2, is a Class
14 A Misdemeanor?
15 MR. DAINES: That's correct, your Honor.
16 MS. SALERNO: That's correct, your Honor.
17 MR. DAINES: In other words--
18 THE COURT: Plead to the Class A theft?
19 MS. SALERNO: Yes, your Honor.
20 THE COURT: Okay.
21 MR. DAINES: Which one is that?
22 MS. SALFRNO: 17. Dismiss the burglary, Second
23 Degree.
24 THE COURT: Mr. McIntire are you with us on this?
25 MR. McINTIRE: I am trying

1 MR. DAINES: There is also Count 2 on 19, you have
2 that, don't you?

3 MS. SALERNO: Right.

4 THE COURT: 18314, you are going to plead guilty
5 to Second Degree Felony, Distribution of Methamphetamine
6 correct?

7 MR. McINTIRE: Yes.

8 THE COURT: And 18315, you are going to plead guilty
9 to Second Degree Felony, once again possession with intent
10 to distribute methamphetamine. And in Count 2, that would
11 be dismissed. That's possession of marijuana.

12 MS. SALERNO: Yes, your Honor.

13 THE COURT: And 18317, you will plead guilty to--

14 MR. DAINES: Both counts.

15 MS. SALERNO: Count 2 only, theft a Class A misdemeanor.

16 MR. DAINES: That's correct, your Honor.

17 THE COURT: And 18379, you will plead guilty to
18 burglary, a Third Degree Felony, and Theft, a Class B
19 Misdemeanor, is that your understanding?

20 MR. McINTIRE: Uh-huh.

21 THE COURT: All other charges will be dismissed.
22 You are reserving the right to appeal my decision on your
23 Motion to Suppress, is that your understanding also?

24 MS. SALERNO: Yes.

25 THE COURT: The State agrees that is a condition

1 of the plea?

2 MR. DAINES: Yes. I assume they have that right
3 anyway. But we don't object to it.

4 THE COURT: Mr. McIntire, do you have a clear mind
5 this afternoon?

6 MR. MCINTIRE: Yes.

7 THE COURT: You are not under the influence of
8 drugs, alcohol, or any other substance?

9 MR. MCINTIRE: No.

10 THE COURT: You understand what I am saying?

11 MR. MCINTIRE: Yes.

12 THE COURT: If you plead guilty, you are giving up
13 your right to a trial.

14 MR. MCINTIRE: Uh-huh.

15 THE COURT: In each of these cases you could have
16 a trial either to a Judge or to a Jury. If it was a Jury,
17 it would be a Jury of eight members. You could not be
18 convicted unless each member of the Jury was convinced of
19 your guilt beyond a reasonable doubt. In each case if you
20 had a trial, you would have the right to confront the witnesses
21 and the evidence the State would have against you. You would
22 have the right to cross-examine the State's witnesses.
23 If you plead guilty, you are giving that up. Do you
24 understand that?

25 MR. MCINTIRE: Yes.

1 THE COURT: Also in each case, you would have the
2 right to present a defense, and a right to compel witnesses
3 to testify for your defense. In each case you could bring
4 in witnesses to testify for your side of the case. If you
5 plead guilty, you can't do that. You understand that also?

6 MP. McINTIFF: Yes.

7 THE COURT: In each case you have the right against
8 compulsory self-incrimination. That means that during a
9 trial where you are the Defendant, you cannot be forced to
10 testify. You can testify if you wanted to, but you wouldn't
11 have to. That would be your choice. If you have a trial,
12 and if you are convicted, you have the right to appeal the
13 conviction. If you plead guilty, you can still appeal the
14 conviction, but you might not have as much to appeal from.
15 Do you have any questions up to this point?

16 MR. McINTIRE: None.

17 THE COURT: At this point you are presumed to be
18 innocent. You don't have to prove your innocence. You can
19 require the State to prove each element of each offense
20 beyond a reasonable doubt. If you plead guilty, you are
21 admitting each element of each offense that you plead guilty
22 to. Do you understand that?

23 MR. McINTIRE: Uh-huh.

24 THE COURT: You understand what the elements of the
25 offenses are?

1 MR. McINTIRE: Uh-huh

2 THE COURT: Case number 18314, the charge is
3 distribution for value of methamphetamine. That means that
4 you sold methamphetamine, a controlled substance of
5 schedule 2. You knew that it was a controlled substance.
6 You did this intentionally. You understand those to be
7 the elements?

8 MR. McINTIRE: Yes.

9 THE COURT: What the State would have to prove
10 beyond a reasonable doubt. If you plead guilty, you are
11 admitting that's what you did. You understand that?

12 MR. McINTIRE: Uh-huh.

13 THE COURT: Case number 18315, you are charged
14 with possession of a controlled substance with the intent to
15 distribute for value. Once again, the substance is
16 methamphetamine. The State would have to prove that you
17 intended to dispense a controlled substance, and you possessed
18 it with that intention. You knew it was a controlled
19 substance.

20 MR. McINTIRE: Uh-huh.

21 THE COURT: If you plead guilty, you are admitting
22 that's what you did. You understand that?

23 MR. McINTIRE: Yes.

24 THE COURT: In case 18370, the charge is Burglary,
25 a Third Degree Felony. The State would have to prove that
you entered a building, or you remained unlawfully in a

1 building. That you intended to commit a theft or a felony
2 or an assault on somebody in that building. That's what the
3 State would have to prove beyond a reasonable doubt. If you
4 plead guilty, you are admitting each of those elements. You
5 understand that?

6 MR. McINTIRE: Uh-huh.

7 THE COURT: In Count 2 of that Information, you
8 are charged with theft, a Class B Misdemeanor. The State
9 would have to prove that you took the property of another,
10 and you intended to keep it. The television set, the value
11 was less than a thousand dollars. If you plead guilty, you
12 are admitting each of those elements. You understand that,
13 too?

14 MR. McINTIRE: Yes.

15 THE COURT: In case 18317, you are charged in Count
16 2 with Theft, a Class A Misdemeanor. The State in that case
17 would have to prove that you obtained or exercised unauthorized
18 control over a television with a dollar value of less than
19 a thousand dollars but more than two hundred and fifty dollars
20 which belonged to somebody else. It was your intent to deprive
21 somebody of that property. If you plead guilty, you are
22 admitting each of those elements, you understand that also?

23 MR. McINTIRE: Uh-huh.

24 THE COURT: The maximum penalty for each class B
25 misdemeanor could be six months in jail and a fine of up to

1 a thousand dollars. The maximum penalty for a Class A
2 Misdemeanor could be one year in either the County Jail or
3 the State Prison, and a fine of up to \$2,500.00. The maximum
4 penalty for a Third Degree Felony could be a period of
5 incarceration for up to five years in the State Prison and a
6 \$5,000.00 fine. And the maximum penalty for each Second
7 Degree Felony could be a period of incarceration for one to
8 fifteen years in the State Prison and a \$10,000.00 fine.

9 There is a possibility of consecutive sentences being
10 imposed also. That means if you plead guilty to several
11 offenses occurring on different dates, the Judge could sentence
12 you to serve consecutive sentences. That means you would have
13 to serve one after another. You understand that?

14 MR. McINTIRE: Uh-huh.

15 THE COURT: When it comes time for sentencing,
16 the Judge decides what the sentence will be. The Judge is
17 not bound by agreements or recommendations when it comes time
18 for sentence, do you understand that?

19 MR. McINTIRE: Yes.

20 THE COURT: Are you satisfied with the advice of
21 your lawyer?

22 MR. McINTIRE: Yes.

23 THE COURT: Do you want more time to talk to your
24 lawyer about this?

25 MR. McINTIRE: No, I don't believe so.

1 THE COURT: Any promises been made?
2 MR. McINTIRE: Huh?
3 THE COURT: Any promises been made to you?
4 MR. McINTIRE: None.
5 THE COURT: Anybody forcing you to plead guilty?
6 MR. McINTIRE: No.
7 THE COURT: Are you pleading guilty because you are
8 guilty?
9 MR. McINTIRE: Yes.
10 THE COURT: You committed each of these crimes that
11 I have outlined to you what the elements of the offense are,
12 is that what you did in each case?
13 MR. McINTIRE: I committed these crimes, yes.
14 THE COURT: I didn't understand that answer.
15 MR. McINTIRE: Yes, I committed these crimes.
16 THE COURT: Do you have a statement?
17 MS. SALERNO: An expiation agreement, your Honor.
18 THE COURT: Alright.
19 MS. SALERNO: If I may approach the bench, your Honor.
20 THE COURT: I have just been handed a copy of an
21 agreement, Mr. McIntire. Did you read this agreement?
22 MR. McINTIRE: Yes.
23 THE COURT: There are some initials after each
24 paragraph. The initials are D.M. Did you initial the
25 paragraphs?

1 MR. McINTIRE: Yes.

2 THE COURT: Signed Darrell McIntire. Did you sign
3 it?

4 MR. McINTIRE: Yes.

5 THE COURT: Do you understand what the agreement says?

6 MR. McINTIRE: Yes.

7 THE COURT: Do you have any questions about this
8 agreement?

9 MR. McINTIRE: No.

10 THE COURT: Going back to case number 18314, the
11 Charge is Distribution for Value of a Controlled Substance,
12 Methamphetamine, a Second Degree Felony occurring on April
13 12th of 1987, to that charge, how do you plead?

14 MR. McINTIRE: Guilty.

15 THE COURT: Case number 18315, you are charged with
16 Possession of a Controlled Substance with Intent to Distribute
17 for Value. Once again the substance is methamphetamine.
18 The alleged date of the violation is April 22nd of 1987.
19 To that charge, how do you plead?

20 MR. McINTIRE: Guilty.

21 THE COURT: On the State's Motion, Count 2 of that
22 Information is dismissed.

23 Case number 18379, in the Amended Information you are
24 charged with Burglary, a Third Degree Felony occurring between
25 June 18th and June 29th of 1987. To that charge, how do you

1 plead?

2 MR. McINTIRE: Guilty.

3 THE COURT: In Count 2, you are charged with theft,
4 a Class B Misdemeanor at the same time and place. To that,
5 how do you plead?

6 MR. McINTIRE: Guilty.

7 THE COURT: Case number 18317, Count 2, you are
8 charged with Theft, a Class A Misdemeanor occurring between
9 April 2nd and April 3rd of 1986. To that charge, how do you
10 plead?

11 MR. McINTIRE: Guilty.

12 THE COURT: Count 1 of that Information is dismissed
13 on Motion of the State.

14 Also case numbers 18316 has already been dismissed.
15 18313 is dismissed. And 18378 is dismissed on Motion of
16 the State.

17 MS. SALERNO: And also, your Honor, Count 2--
18 you already dismissed Count 2 of 18315?

19 THE COURT: I think I have. I think I already said
20 that.

21 Mr. McIntire, I am going to refer your cases to the
22 Adult Probation and Parole Department for report. Continue
23 sentencing until October 5th.

24 Does that complete the State's calendar?

25 MR. DAINES: I think so, your Honor. I hope so.

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C E R T I F I C A T E

STATE OF UTAH)
) ss.
County of Weber)


I, James N. Jones, do hereby certify:

THAT I am one of the Official Court Reporters for the
State of Utah, and a competent machine shorthand writer.

THAT on September 14, 1987, I reported in machine
shorthand the proceedings had in the matter of State of Utah
vs. Darrell McIntire.

THAT thereafter, I reduced my machine shorthand notes
to typewriting, and the foregoing transcript, pages 1 through
16, inclusive, constitute a full, true and correct transcription
of the proceedings had at said time and place.

IN WITNESS WHEREOF, I have hereunto set my hand this
8th day of November, 1988.


James N. Jones
Official Court Reporter